IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 22ND NOVEMBER 2006 / 1ST AGRAHAYANA 1928

Crl.Rev.Pet.No. 4064 of 2006()

CRA.92/2005 of ADDL. SESSIONS COURT (ADHOC-III), KASARAGODE
STC.1132/2004 of JUDL. MAGISTRATE OF FIRST CLASS-II, HOSDRUG

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REVN. PETITIONER/ APPELLANT/ACCUSED:

MAMUNI KUNHIKANNAN, S/O.K.V. KUNHAMBU,
AGED 62 YEARS, RESIDING AT PALICHON,
THAIKKADAPPURAM P.O., NILESWAR,
HOSDURG TALUK, KASARAGOD DISTRICT.

BY ADV. SRI.M. SANTHOSHKUMAR

RESPONDENTS/RESPONDENTS/COMPLAINANT AND STATE

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1. K.P.AMBIKA, W/O.SADANANDAN,
   AGED 62 YEARS, AZHITHAL, THAIKKADAPPURAM P.O.,
   NILESWAR, HOSDURG TALUK, KASARAGOD DISTRICT.

2. STATE OF KERALA, REP. BY THE PUBLIC
   PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

   R2 BY PUBLIC PROSECUTOR ADV. SHRI KAMMAPPU.

   THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 22/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

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CRL.R.P. 4064 OF 2006

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Dated this the 22nd November , 2006

O R D E R

Petitioner, the accused in S.T. No. 1132 of 2004 on the file of the court of the Judicial Magistrate of the First Class -II, Hosdurg, was convicted for the offence under section 138 of the Negotiable Instruments Act and he was sentenced to undergo simple imprisonment till the rising of the court and to pay an amount of Rs. 32,000/- as compensation to the complainant and in default of payment of compensation, to undergo simple imprisonment for three months. On appeal before the Addl. Sessions Judge(Adhoc-III), Kasaragod as Crl. Appeal No.92 of 2005, the appellate court confirmed the conviction and sentence.

2. The case of the complainant is that the accused who is known to the complainant borrowed a sum of Rs. 32,000/- from the complainant and in discharge of that liability issued Ext.P1 cheque dated 28.02.2004. The cheque was dishonoured on the ground of insufficiency of funds. Ext.P4 notice was issued to the accused, to which the accused sent Ext.P6 reply. The case put forward by the accused is that the cheque was issued under

duress.

3. In the examination under section 313 of the Code of Criminal Procedure, the accused stated that a local club was conducting a 'kuri' and that the complainant was a subscriber to the said 'kuri'. The police called the accused to the police station and he was compelled to issue the cheque, it is stated. This case put forward in 313 questioning is not reflected in cross examination of P.W.1. The brother of the accused was examined as a defence witness. It has come out in evidence of D.W.1 that the accused was collecting money from the subscribers in the 'kuri' and that he is residing very near to the club. D.W.1 stated that the accused did not proceed against the police because he was under the impression that the local club would pay the amount. The trial court noticed that the accused as well as D.W.1 has no case that the accused has any connection with the club. If that be the case, there was absolutely no reason as to why the accused should be kept under duress for the purpose of signing and handing over Ext.P1 cheque. In the reply notice, there was no mention about the 'kuri' transaction. It was held by the trial court that there is absolutely no evidence in the case to indicate that there

was 'kuri' transaction as stated by the accused. The trial court disbelieved the evidence of D.W.1 and held that the accused failed to rebut the presumption under section 139 of the Negotiable Instruments Act . The appellate court on consideration of the evidence in the case concurred with the view taken by the trial court .

4. No grounds are made out for interference under section 397 of the Code of Criminal Procedure. There is no error, illegality or impropriety in the proceedings or in the judgments impugned. The conviction of the petitioner under section 138 of the Negotiable Instruments Act is therefore confirmed.

5. As regards the sentence, the sentence of imprisonment till the rising of the court and to pay compensation of Rs. 32,000/- is in no way excessive. Therefore, there is no scope for interference in the sentence as well. However, taking note of the fact that the petitioner/accused is aged 62 years and taking into account the submission made by the counsel for the petitioner that it would be possible for the petitioner to raise necessary funds to pay compensation only if some more time is granted, I am inclined to grant three months' time to the petitioner to pay the amount of

compensation. Since no interference is being made in the conviction or sentence and only indulgence is shown with regard to the grant of time to pay compensation, I do not think it is necessary to issue notice to the first respondent.

6. The Crl. Revision Petition is accordingly dismissed. However, the petitioner is granted three months' time to pay the compensation amount. The petitioner shall appear before the trial court on 20.12.2006 to undergo imprisonment till the rising of the court. He shall also continue to appear as may be directed by the trial court till the amount of compensation is paid.

It is submitted by the counsel for the petitioner that a warrant for arrest of the petitioner is pending. In view of the direction to appear on 20.12.2006 and in view of grant of time to pay compensation, it is made clear that the warrant shall not be executed till 20.12.2006
and until the expiry of three months, as the case may be.

K.T. SANKARAN,
JUDGE.

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